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SUBJECT: MEETING OF SUBCOMMITTEE OF THE INTER-GOVERNMENTAL COMMITTEE FOR PROMOTING THE RETURN OF CULTURAL PROPERTY TO ITS COUNTRY OF ORIGIN OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION

¶1. SUMMARY. The Subcommittee of the Inter-governmental Committee for Promoting the Return of Cultural Property to its Country of Origin or its Restitution in Case of Illicit Appropriation (Subcommittee) (ICPRCP) met at UNESCO Headquarters, November 18-20, to negotiate draft rules of mediation and conciliation. Under the Chairmanship of the Greek delegate, an experienced international lawyer, the Subcommittee reached agreement on most of the rules. The major outstanding issue concerns whether participation in the proposed mediation and conciliation procedure should be limited to member states. This question will be before the Inter-governmental Committee when it meets in 2010. END SUMMARY.

¶2. At its meeting in May 2009, the Inter-governmental Committee for Promoting the Return of Cultural Property to its Country of Origin or its Restitution in Case of Illicit Appropriation (Committee) decided to constitute a subcommittee to continue inter-sessional discussion on the draft text of "Rules of Procedure on Mediation and Conciliation". The Committee had adopted the first three of eleven draft rules. The Subcommittee (Argentina, Burkina Faso, China, Greece, Guatemala, India, Iraq, Italy, Japan, Libya, Mexico, Nigeria, Republic of Korea, Romania, Senegal, U.S.) was chaired by the Greek delegate, Konstantine Oikonomides.

¶3. The Subcommittee was able to reconcile differing views on the operational aspects of the rules. Among those issues, only the question of whether the UNESCO Director General would have a role in appointing mediators or conciliators when the parties cannot agree, remains open (Art.7, para 2). On this point, the Subcommittee agreed that further consultation would be needed.

¶4. With regard to the central issue of scope, however, no agreement was possible. The Italian delegation came to the meeting with new proposals for Article 4 of the draft rules. The Italians, who dominated the discussion, argued that public and private institutions and even individuals could be parties, if they are in possession of cultural property, are not represented by a state and the procedure is initiated by a state (Art.4, para 2bis). Korea, Mexico and Romania supported the Italian proposal. Others (Canada, U.S., Japan, Argentina) expressed reservations about expanding the scope to include institutions and individuals when other processes were available to them such as the International Council of Museums.

They also argued that the procedure could clash with domestic processes and could politicize the case. In the clear absence of agreement, the Subcommittee decided to send draft Article 4, para 1 and 2bis to the Committee.

¶5. The Committee is expected to meet in May or June of 2010. It will have before it the first three articles which it adopted in May 2009 as well as Articles 4 through 11 which the Subcommittee discussed at this session. (Text sent to ECA/P, MPKouroupas) Since agreement was reached on those articles, except as herein noted, the Committee will concentrate on Article 4 (scope).

¶6. COMMENT. Department may want to consider targeted approaches to other committee members to gain support for the position that the process should be confined to states. The Department may also wish to consider whether proposed Article 4 para 2bis contravenes the UNESCO Constitution(Article I para 3): "With a view to preserving

the independence, integrity and fruitful diversity of the cultures and educational systems of the states members of this Organization, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction." END COMMENT.

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